IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 800 of 1993
with
MISC. CRIMINAL APPLICATION No. 3323 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHRAY PANCHURAY

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Appellant

MR KP RAVAL, APP for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE J.R.VORA

Date of decision: 20/07/2000

ORAL JUDGEMENT [Per: Bhatt, J.]

By this conviction appeal, the appellant original accused Rameshrai Panchurai Ray, has questioned the legality and validity of the judgment of conviction and order of sentence, recorded by the learned Addl. Sessions Judge, at Panchmahals, Godhra, in Session Case No. 52 of 1993, whereby, the accused came to be charged for having committed offence punishable under Section 302, by committing murder of one Paramshankar, with the help of stick, and he is ordered to undergo sentence for imprisonment for life, whereas, he is also held guilty for the offence u/s 323 of the Indian Penal Code (IPC), for causing hurt to prosecution witness No.8, Vijaykant Shukla, and for which, he is awarded no separate sentence.

The criminal complaint, came to be filed against the accused, on 13th January, 1993, at Bodeli Police Station, by PSO, for the incident, which occurred on 9.1.1993, at about 12.00 midnight, in which, accused is alleged to have given fatal blows to the deceased, and prosecution witness Vijaykant, was also given stick blows when he intervened.

Accused, deceased and prosecution witness Vijaykant, were staying jointly in a kuchha hut, near Narmada Canal, at village Kuria, in Sankheda Taluka of Panchmahals District, at the relevant time. It is the prosecution case that, there was a scuffle between the deceased and the accused, on account of spoiling the water in the pot, which resulted into hot exchange of words, and aggravated to the stage of beating with the help of stick, as both of them were Security Guards, and ultimately culminated into the death of Paramshankar within 24 hours, after the incident occurred.

Upon the completion of the investigation, charge sheet was filed, and thereafter, case was committed to the Sessions Court, and the Sessions Court registered the case at No. 52 of 1993. In support of prosecution case, as many as 11 witnesses, came to be examined. Defence led no evidence. However, it may be stated that, accused was also given blow, and he had sustained injuries, and he had lodged the complaint, and he was also treated.

It is clear from the record that deceased Paramshankar died a homicidal death, and the cause of death was injuries sustained by him on the head, which is attributable by a stick, and the injured witness

Vijaykant on hearing the quarrel, had come out, and tried to intervene, and he was also given stick blows by the accused. Consequently, he was hurt, and he was also treated.

There is no any manner of doubt from the evidence led by the prosecution that deceased Paramshankar died a homicidal death. Medical evidence is also very clear. The question, which, now, requires to be adjudicated upon, at this juncture, is as to whether, the homicidal death was, on account of blows given by the accused Rameshray. On this point, we have examined the entire record and admitted points in the defence, which leaves no any manner of doubt from the evidence on record in particular, and the evidence of the injured eye witness, prosecution witness No.8 Vijaykant Shukla that, the author of the injury, which culminated into the death of deceased, was nobody else than the accused appellant before us. It is, therefore, clear in our mind from the record that, accused is responsible for causing homicidal death.

Now, the question which would fall for consideration, at this stage, would be, as to whether, in the facts of the case, and the evidence on record, whether the incriminating act of the accused, which resulted into death of the deceased Paramshankar, could be said to be a murder or a culpable homicide, not amounting to murder?

After having given our anxious thought to the peculiar facts and admitted special circumstances, the homicidal death though caused by the accused Rameshrai, could not be said to be a murder, but it could be said to be an offence of culpable homicide, not amounting to murder.

It is an undisputed fact that there was scuffle, preceded by hot exchange of words, as a result of which, accused and the deceased had beaten each other with the stick, which they were holding, as they were the Security Guards. In a case of homicide, which is not premeditated, and which has flared up all of a sudden, there and then, and in the present case, on account of spoiling of pot water. Therefore, in our opinion, the exception to Section 300 would be squarely attributable, which provides for culpable homicide, which is not murder, if it is committed without premeditation in a sudden fight and when the offender having not taken undue advantage of the act and it is a crucial factor. The manner and mode in which the fight started, beating and exchange of blows with the help of sticks, it could not be said that the accused had taken any undue advantage,

or that he acted in an unusual manner or in a cruel manner. There is no, even, allegation in course of the submissions before us that, there was a requisite intention to commit murder of deceased Paramshankar by the accused. In such a situation, obviously, the accused would be entitled to the benefit of Exception four of Section 300, and that is the reason, why the culpability committed by the accused could be said to be a culpable homicidal, not amounting to murder and offence would attract Sec. 304 Part-II of IPc and not Sec. 302.

In the light of the discussions as above, and the admitted facts, much less the evidence of the prosecution, the recording of guilt, for having committed offence under Section 302, for committing murder of deceased Paramshankar is patently, manifestly and perversely illegal. Obviously, therefore, the order of sentence for life is also illegal and bad in law.

Our attention has been invited that the accused appellant before us has already undergone and has remained in custody for a period more than 7 years and 6 months after the occurrence of the incident. Section 304 Part-II provides imprisonment of either description for a term, which may extend to 10 years, or with fine, or with both, if the act is done with the knowledge, that is likely to cause death, but without any intention to cause death, or to cause such bodily injury, as is likely to cause death. Undoubtedly, the blow given on the head would lead us to attribute the knowledge, in absence of any intention to commit murder and knowledge of likely result of the act, and that too, in the light of the factual situation of the present case, in our opinion, imprisonment for a period more than undergone by the accused person is not warranted. So far as the offence under Section 323 is concerned, it is rightly held proved by the trial court, and since the accused is held guilty for the offence under Section 304 Part-II, no separate sentence is necessary at this stage.

Consequently, the appellant accused partly succeeds. The impugned judgment and order dated 22nd July, 1993, recorded in Session Case No. 52 of 1993, shall stand modified, recording of guilt for having committed offence under Sec. 302 of the IPC, is quashed and set aside, and instead, it is substituted by an offence punishable under Section 304 Part-II of the IPC, and since the accused has already undergone a period, as an under trial, as well as, after the conviction in the custody, which is more than 7 years 6 months, no further question of assessing the quantum of punishment would arise, as in our opinion,

the period undergone, is sufficient, in the light of the culpability established against the accused, under Section 304 Part-II of the IPC.

In the result, the appeal is partly allowed. The appellant - original accused shall be set at liberty forthwith, if no longer required in any other case or trial or offence.

In view of the order passed in the main matter, no order is required to be passed in Misc. Criminal Application No. 3323 of 2000, which shall stand disposed of accordingly. Rule is also discharged.

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